

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

Cullan and Cullan LLC,
on behalf of itself and
all others similarly situated,

Plaintiff,

v.

m-Qube, Inc., *et al.*,

Defendants.

Case No. 8:13-cv-00172

The Honorable Joseph F. Bataillon

Magistrate Judge Thomas D. Thalken

**PLAINTIFF’S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiff Cullan and Cullan LLC (“Plaintiff”), individually and on behalf of the Settlement Class (as defined in the Settlement Agreement), by and through undersigned counsel, respectfully moves this Honorable Court for preliminary approval of a proposed class action settlement agreement (the “Settlement”) between Plaintiff and defendants Post SMS. Co. Americas, Inc., formerly known as Mobile Messenger Americas, Inc., and Post SMS Co. Qube, Inc., formerly known as m-Qube, Inc. (collectively, “Mobile Messenger”), and certification of the Settlement Class for settlement purposes only. In support of its motion, Plaintiff submits as follows:

1. On June 6, 2013, Plaintiff filed its Class Action Complaint alleging claims against Mobile Messenger and CF Enterprises, arising out of alleged unsolicited text messages sent from Premium Shortcodes related to Mobile Content, such as ring-tones, news and information alerts, and other digital and electronic content to wireless telephone subscribers, and the sale and billing of allegedly unauthorized Mobile Content to wireless telephone subscribers. [D.E. #1].

2. After years of litigation and months of hard-fought arm's length negotiations, Plaintiff and CF Enterprises entered into the Settlement Agreement, a copy of which is attached as Exhibit 1 to Plaintiff's Memorandum in support of this motion, filed contemporaneously herewith.¹

3. Pursuant to Fed. R. Civ. P. 23, Plaintiff now seeks preliminary approval of the Settlement. Plaintiff asks that the Court preliminarily approve the Settlement and certify the Settlement Class for Settlement purposes only. Plaintiff also requests that the Court direct that notice of the Settlement be provided as stated in the Notice Plan; appoint Plaintiff as Class Representative; appoint Dahl Administration, LLC, as Claims Administrator and Notice Specialist; appoint Ben Barnow and Ralph K. Phalen as Co-Lead Settlement Class Counsel; approve the Claim Form attached as Exhibit A to the Settlement; and schedule a final fairness hearing to consider entry of a final order approving the Settlement and the request for attorneys' fees, costs, and expenses and Representative Plaintiff incentive award.

4. In further support of this motion, Plaintiff submits its Memorandum in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement and the exhibits attached thereto.

WHEREFORE, Plaintiff, individually and on behalf of the Settlement Class, by and through counsel, respectfully moves for entry of an Order:

- A. granting preliminary approval of the Settlement;
- B. approving Notice to the Settlement Class and methods for dissemination of Notice as set forth in the Settlement and Notice Plan;
- C. certifying the Settlement Class for settlement purposes only;
- D. appointing Cullan and Cullan LLC as Class Representative;

¹ The definitions contained in the Settlement are incorporated herein by reference.

- E. appointing Dahl Administration, LLC, as Notice Specialist and Claims Administrator;
- F. appointing Ben Barnow and Ralph K. Phalen as Co-Lead Settlement Class Counsel;
- G. approving the Claim Form as attached as Exhibit A to the Settlement;
- H. scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement and the request for attorneys' fees, costs, and expenses and Representative Plaintiff incentive award; and
- I. granting any other or additional relief as the Court may deem just and appropriate.

Dated: December 21, 2015

Respectfully submitted,

/s/ Ben Barnow

One of the attorneys for Plaintiff

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Additional Plaintiff's Counsel

Certificate of Service

The undersigned hereby certifies a true and correct copy of the foregoing was served via filing with the Court's e-filing service, on this 21st day of December, 2015.

/s/ Ben Barnow